

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

HERBERT DAVIS,

Plaintiff,

vs.

C/O T.C. JOHNSON, et al.,

Defendants.

1:05-cv-00368-AWI-LJO-P

**FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
ACTION, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM UPON  
WHICH RELIEF MAY BE GRANTED  
AND FAILURE TO OBEY A COURT  
ORDER**

(Doc. 9)

Plaintiff Herbert Davis ("plaintiff") is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. By order filed September 27, 2005, the court found that plaintiff's complaint failed to state any claims for relief against the named defendants. The court dismissed plaintiff's complaint and ordered plaintiff to file an amended complaint within thirty (30) days from the date of service of that order. More than thirty days have passed and plaintiff has not filed an amended complaint or otherwise responded to the court's order.

Local Rule 11-110 provides that "failure of counsel or of a party to comply with these Local Rules or with any order of the Court may be grounds for the imposition by the Court of any and all

1 sanctions . . . within the inherent power of the Court.” District  
2 courts have the inherent power to control their dockets and “in the  
3 exercise of that power, they may impose sanctions including, where  
4 appropriate . . . dismissal of a case.” Thompson v. Housing Auth.,  
5 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action,  
6 with prejudice, based on a party’s failure to prosecute an action,  
7 failure to obey a court order, or failure to comply with local  
8 rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir.  
9 1995) (dismissal for noncompliance with local rule); Ferdik v.  
10 Bonzelet, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for  
11 failure to comply with an order requiring amendment of complaint);  
12 Carey v. King, 856 F.2d 1439, 1440-41 (9<sup>th</sup> Cir. 1988) (dismissal for  
13 failure to comply with local rule requiring pro se plaintiffs to  
14 keep court apprised of address); Malone v. U.S. Postal Service, 833  
15 F.2d 128, 130 (9<sup>th</sup> Cir. 1987) (dismissal for failure to comply with  
16 court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9<sup>th</sup> Cir.  
17 1986) (dismissal for failure to lack of prosecution and failure to  
18 comply with local rules).

19 In determining whether to dismiss an action for lack of  
20 prosecution, failure to obey a court order, or failure to comply  
21 with local rules, the court must consider several factors: (1) the  
22 public’s interest in expeditious resolution of litigation; (2) the  
23 court’s need to manage its docket; (3) the risk of prejudice to the  
24 defendants; (4) the public policy favoring disposition of cases on  
25 their merits; and, (5) the availability of less drastic  
26 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at  
27 1423-24; Malone, 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61;  
28 Ghazali, 46 F.3d at 53.

1 In the instant case, the court finds that the public's  
2 interest in expeditiously resolving this litigation and the court's  
3 interest in managing the docket weigh in favor of dismissal. The  
4 third factor, risk of prejudice to defendants, also weighs in favor  
5 of dismissal, since a presumption of injury arises from the  
6 occurrence of unreasonable delay in prosecuting an action.  
7 Anderson v. Air West, 542 F.2d 522, 524 (9<sup>th</sup> Cir. 1976). The fourth  
8 factor -- public policy favoring disposition of cases on their  
9 merits -- is greatly outweighed by the factors in favor of  
10 dismissal discussed herein. Finally, a court's warning to a party  
11 that his failure to obey the court's order will result in dismissal  
12 satisfies the "consideration of alternatives" requirement. Ferdik  
13 v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson,  
14 779 F.2d at 1424. The court's order of September 27, 2005,  
15 requiring plaintiff to file an amended complaint, expressly stated:  
16 "If plaintiff fails to file an amended complaint in compliance with  
17 this order, the court will recommend that this action be dismissed,  
18 with prejudice, for failure to state a claim upon which relief may  
19 be granted." Thus, plaintiff had adequate warning that dismissal  
20 would result from non-compliance with the court's order.

21 Accordingly, it is HEREBY RECOMMENDED that this action be  
22 DISMISSED, with prejudice, for failure to state a claim upon which  
23 relief may be granted and for failure to obey the court's order of  
24 September 27, 2005.

25 These Findings and Recommendations are submitted to the United  
26 States District Judge assigned to the case, pursuant to the  
27 provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days**  
28 after being served with these Findings and Recommendations,

1 plaintiff may file written objections with the court. Such a  
2 document should be captioned "Objections to Magistrate Judge's  
3 Findings and Recommendations." Plaintiff is advised that failure  
4 to file objections within the specified time may waive the right to  
5 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
6 (9th Cir. 1991).

7  
8 IT IS SO ORDERED.

9 **Dated: November 7, 2005**  
10 b9ed48

/s/ Lawrence J. O'Neill  
UNITED STATES MAGISTRATE JUDGE